

**D&D RFP Questions
(116 - 126)**

116. a. The first sentence of Clause H.14(E)(2) states that "costs of challenging or defending actions brought against the Contractor for violations of environmental requirements are specifically disallowed." [collectively, "Challenge and Defense Costs"]. The second and third sentences of Clause H.14(E)(2) indicate that Challenge and Defense Costs may be allowable under some circumstances, including "if there is no settlement, conviction, or finding of liability."

Aside from the disallowance of Challenge and Defense costs, does DOE intend to further disallow reimbursement for liabilities to third persons (that grow out of contractor caused environmental violations) even when conditions in DEAR 952.231-71 are met (i.e., the contractor management personnel have not committed willful misconduct, have acted in good faith and exercised prudent business judgment). Please clarify

b. Please confirm that Challenge and Defense costs will be reimbursed, consistent with DEAR 952.231-71, when—(i) the outcome of the litigation or other legal proceeding demonstrates that the allegations against the Contractor were not valid or (ii) consistent with DEAR 952.231-71, when any settlement indicates that the third party was unlikely to prevail."

Response: a. H.14(E)(1) and (E)(2) have been deleted. The revised H.14(E) reads as follows:

H.14(E) For purposes of FAR 31.205-15(a), costs of fines and penalties resulting from violations of, or failure of the contractor to comply with, environmental requirements are unallowable costs.

Changes posted in Amendment 003.

b. The Contracting Officer will consider litigation costs on a case by case basis during contract administration. No change to RFP required.

117. The first Sentence of Subparagraph L.17(b)(6) requires submission of a Performance Guarantee Agreement "from the ultimate corporate parent(s)", but the term "ultimate corporate parent" is not specifically defined. The second sentence of Subparagraph L.17(b)(6) requires submission of a Performance Guarantee Agreement by each of "the parent companies of the offeror" when the offeror is a joint venture, Limited Liability Company (LLC), or other similar entity.

Please confirm that submission of a Performance Guarantee Agreement by each member of an LLC that is the offeror will satisfy the requirement of Subparagraph L.17(b)(6), consistent with the requirement in other recent DOE source selections.

Response: A Performance Guarantee Agreement is required by each member of an LLC. No RFP revision required.

118. DOE has answered several questions (such as #40, 41, 52) related to Attachment L-10 that Offerors are to assume FY2008 actual costs remain constant (escalated) over the life of the contract. These answers state that DOE intends to update the Attachment L-7 spreadsheet to reflect these costs. Based on the DOE Q&A responses to date in reference to these L-10 costs, are we correct in assuming that the response to Q&A #92 applies to these costs as well? In other words, are the L-10 cost assumptions to be treated in the same manner as the DOE provided costs in L.19(j) where we do not need to create WBS+2 and the associated detail and backup for those numbers?

Response: Attachment L-10 is Cost Assumptions/Information for the offeror provided cost estimates, not DOE provided cost. However, WBS+2 is not required for C.2.5.4.1, C.2.5.4.2, and C.2.5.4.3.

119. DOE has provided the rates for various labor categories incumbent to the current Portsmouth EM effort. In order to adequately estimate the required additional resources along with the appropriate indirect rates needed to accomplish the PWS, can DOE provide the current number of employees currently working at the Portsmouth for each labor category for which rates have been provided?

Response: The number of employees required for the work the offeror proposes shall be based on the offeror's proposed approach. However, information for the incumbent employees' average labor rates at Portsmouth is available under the Reference Documents on the Portsmouth acquisition website. No RFP revision required.

120. a. The RFP Attachment L-10 cost assumption requirements states: "Offeror shall use the specific assumptions (design, size, waste volumes, WAC, construction etc.) contained in this cost assumptions/ information and the reference documents titled "TPMC Conceptual Design Report for the D&D Project at the PGDP – September 2006" and "Portsmouth D&D Project On Site Waste Disposal Facility Conceptual Design – Final Submittal – August 2006" contained in the Portsmouth Gaseous Diffusion Plant Acquisition website, Reference Documents."

The DOE response to Q&A #45 states: "Revised Response: Offerors shall use the design and construction information for the OSWDF outlined in the report, "Portsmouth Gaseous Diffusion Plant Decontamination and Decommissioning On-site Waste Disposal Facility Conceptual Design – Final Submittal, dated August 2006".

Offerors shall use the cost estimate information for the OSWDF outlined in the report, "Final Cost Estimate Report for the Onsite Waste Disposal Facility at the Portsmouth Gaseous Diffusion Plant Decontamination and Decommissioning Project Scenarios I,II,IV,VI, and VIII" dated August 31,2006, using the preferred alternative VIII.

b. Additionally, Q&A #45 states that the construction of the OSWDF shall be consistent with the Offeror's technical approach. Use of the preferred alternative VIII (costs and schedule) seems to conflict with this statement.

c. The Q&A responses appear to conflict with the current Attachment L-10. Regarding the highlighted sections above:

- o Is DOE going to issue an Amended/revised Attachment L-10 directing the Offerors to use the actual cost estimates in the stated reference document as a DOE-provided cost?**
- o If so, will guidance be provided to separate the Design, Construction, and Operational costs into the appropriate WBS numbers?**

Will guidance be provided to adjust the annual allocation of the costs to the schedule contained in the RFP?

Response:

a. Attachment L-10 will be revised to direct the offerors to use the specific cited reference documents to develop the cost for C.2.5.4.1 and C.2.5.4.2. A table will be placed in Attachment L-10 to address the cost for C.2.5.4.3. These are not considered DOE provided costs.

b. No. The revised response to Question 45 previously deleted the phrase "the construction of the OSWDF shall be consistent with the Offeror's technical approach"

c. See response to a.

121. Since the OSWDF is optional scope, are the costs associated with this scope outside of the annual funding profile provided by DOE for the Portsmouth D&D project? Is there an additional funding profile amount that should apply to this optional work scope? Please advise.

Response: No, the OSWDF option is included in the funding profile. No RFP revision required.

122. a. Should offerors use the Incumbent Employee's Average Labor Rates supplied on the DOE web-site for union-represented craft employees; or should we use the actual current hourly labor cost being incurred as specified in the current union agreements?

b. Should offerors assume that the calculation of the DOE-supplied 110% fringe rate for union personnel (Union Fringe Benefit Rate - Including Incumbent and Newly-hired Union Personnel) accounts for the COLA payment not rolled into base rate; or will DOE provide an amended union fringe benefit rate to be used?

Response: a. The offeror should use the average labor rates supplied by DOE.

b. The DOE-supplied 110% fringe value for union personnel accounts for the COLA payment not rolled into the base rate.

123. Under which PWS should the normal project support functions: i.e. procurements and contractors, financial management, subcontracting, legal, human resources, and internal information resource management project support function costs be accrued?

Response: Normal project support function as described shall be placed in PWS C.2.7.2, Project Management unless the offeror is including these costs as part of its overhead.

124. The amendment revises the schedule of performance so that the D&D Contractor will take over the X-333 Process Building on the first day of the contract. This change necessitates that the D&D Contractor now perform due diligence on X-333 during Contract Transition. Will DOE increase the funding for Transition to allow for the cost of performing due diligence on X-333?

Response: No, the funding profile for the transition period will remain at \$4M.

125. Having added an additional clause (K.9) to the Section K Reps. and Certs., is it DOE's intention to provide a conformed Section K pdf file, or is it the bidders responsibility to re-create Section K and add the new clause?

Response: Section K has been conformed and will be uploaded to the website.

10-7-09

126. Attachment L-10 references the “TPMC Conceptual Design Report for the D&D Project at the PGDP – September 2006” as a source for design and cost assumptions for the OSWDF, but the link for that document on the DOE web site produces a “The page cannot be found” message.

In response to Question #45, DOE references other documents as the sources that should be used to support estimating efforts but that response has never been formalized in an Amendment and the September 2006 report remains as the reference document of record in the RFP as written. Does DOE intend to make the September 2006 report available or, alternatively, to remove reference to it in the RFP by formal Amendment?

Response: The document link was re-established and in working order on 9/15/09.

See response to Question and Answer #120.